A variety of conflicting presumptions have been developed. In consequence, in the case of *South African Breweries* v. *King*, [1899] 2 Ch. D. 173, the court had to resort to the phrase: "the law of the place with which the contract has most real connection." In this case an injunction was sought against the violation in Natal, South Africa, of a contract made in the South African Republic not to engage in the brewing business in any part of South Africa for five years. The injunction was refused on the ground that the stipulation was void by the law of the Transvaal. Of the propriety of this result there can be little doubt on any view, since performance was due in part, at least, at the place of contracting. Exception may be taken, however, to such indeterminate language.

In this country, if the cases have not been so wilfully vague as in England, they have often been equally indiscriminating. They have failed, it would seem, to analyze the elements of contracts before determining which law to apply to the element in question. In regard to validity, which was the issue in the principal case, many of our courts, notably the Federal courts, have followed the later English cases in applying the law which it is presumed the parties intended to incorporate in the contract. Unlike the English cases, however, they presume this to be the law of the place of performance. *Pritchard* v. *Norton*, 106 U. S. 124. Most jurisdictions, on the contrary, have determined the legality of contracts by the law of the place where the contract was made. *Aker* v. *Demond*, 103 Mass. 318; *Staples* v. *Nott*, 128 N. Y. 403.

This divergence is an example of a failure to analyze and of an undue extension of the test of the intent of the parties, which is useful only in cases of interpretation. Since interpretation seeks only the intent of the parties expressed in an obligation admittedly binding, the law governing interpretation doubtless should be that of the place which the parties may be presumed to have intended should govern. But no such reason exists for applying this test in deciding the validity of a contract. A legal right can be created only by the law. Until it makes binding a personal relation, the intent of the parties can be of no consequence. This reasoning, as carefully developed in 10 Harvard Law Review, 168, leads to the true rule for determining which law to apply. The law that imposes the obligation must have jurisdiction of the act which invokes it. Hence the tests of the legality of a contract should be sought — where most of our courts have sought them — in the law of the place where the contract is made.

SUBROGATION AND VOLUNTEERS. — A recent case, *Brown* v. *Rouse*, 58 Pac. Rep. 267 (Cal., Sup. Ct.), illustrates the length to which a court of equity will go in refusing subrogation to a volunteer. The defendant's husband, acting under a power of attorney which the plaintiff, under a mistake of law, thought authorized a mortgage, gave the plaintiff a mortgage on the defendant's land in return for a loan, with which a prior mortgage on the land was paid off. The court held that as the plaintiff was under no obligation to discharge the prior mortgage, he, as a volunteer, could not be subrogated to the rights of the prior mortgagee. Subrogation, it is said, will be decreed only in favor of a party who is in some way compelled to discharge a demand against a common debtor.

The rule adopted in the principal case is that sanctioned by the weight

of authority, but the courts are by no means uniform in its application, and there are many exceptions to it. Thus subrogation is usually granted to a volunteer, who advances money to a wife living apart from her husband to be expended for necessaries, *Harris* v. *Lee*, 1 P. W. 482; or who pays a protested bill of exchange for the honor of the drawer or other party to it, *Bishop* v. *O'Connor*, 69 Ill. 431; or who advances money to pay a claim, owing to a mistake of fact, or owing to fraud in the borrower, *Milholland* v. *Tiffany*, 64 Md. 465. Indeed, it is said by Allen, J., in *Barnes* v. *Mott*, 64 N. Y. 397, that the doctrine of subrogation has of late been greatly extended, and, modified to meet the circumstances of cases, has been applied to volunteers. The confusion on this subject seems to be due to the fact that the courts have erroneously treated the rule, that equity will not grant subrogation to a meddler, as in some way a deduction from the rule that it will not aid a volunteer. The subject would be much clearer if it were generally recognized that subrogation will be granted when justice demands it. On principle there seems to be no sufficient reason for calling a person, situated as is the plaintiff in the present case, a meddler, and on that account refusing him equitable relief. He was not officious, the prior mortgage was paid off to protect, as he thought, his own interests, and the distinction drawn by the court, that as his payment was due to a mistake of law and not one of fact, there could be no subrogation, appears in a court of equity rather forced.

The court, moreover, fails to notice that the plaintiff might have had a remedy at law. If the defendant repudiated the transaction, the consideration on which the first mortgagee received the money fails, he will still hold his remedy, the mortgage debt, and the plaintiff can recover against him in an action for money had and received. If, on the other hand, the defendant ratifies the transaction, since that ratification is equivalent to a prior authority, it would seem that the plaintiff could recover against the defendant in an action for money paid to the defendant's use. *Crumlish's Adm'r* v. *Improvement Co.*, 38 W. Va. 390.

THE LAW GOVERNING TRIBAL INDIANS. — The recent case of *Jones* v. *Meehan*, Supreme Court of the United States, October Term, 1899, manuscript, brought up an interesting question as to the status of certain Indian tribes in Minnesota. In that case, a bill in equity to quiet title, it became necessary for the plaintiff to show that one Moose Dung the younger was sole owner of the land in question. All his right he had as heir of his father, the old chief Moose Dung of the Red Lake Band of Chippewa Indians; to whom the land was originally given by the United States. The old chief left a number of children by two wives; it was contended that they all inherited the lands of their father. But the court said these Indians were tribal Indians, they lived with their tribe, and the tribal organization was still kept up; so the laws of the tribe must govern the descent of the property. And by the laws of the tribe, as was established, the young Moose Dung, the eldest son of the old chief and his successor as chief of the tribe, took all the property of the father. Those Indian tribes, although the United States deals with them by treaty, are yet of necessity subject to whatever legislation Congress may enact for them, *U. S.* v. *Kagama*, 118 U. S. 375; but they have no